

Money, Politics & the Constitution – Donna Edwards Keynote Transcript

Keynote: The Honorable Donna Edwards (D-MD)

Donna Edwards:

Thank you. What Michael didn't tell you is that when I was at Public Citizen, he hired me. So I'd like to think that I got my start working on campaign finance reform and ethics reform and lobbying reform. And you can see how far we've gotten.

It's wonderful to be here with you. And part of the reason I accepted the invitation to get up and leave my house at 5 o'clock this morning is for Michael and the Brennan Center –and for many of you, my former colleagues, both in philanthropy and at other non-profit organizations. And being here is especially important -- especially in this environment post-*Citizens United*.

It is a great relief to be talking about something other than health care reform. But it is in thinking about health care, and the lobbying and spending that went on, particularly in this last year, that should give us great pause in looking at the Supreme Court's decision in *Citizens United*. And now it's true that the money spent by insurance companies and the non-profit sector was spent trying to have an impact on the legislative process. But I want to underscore the impact that it also has on the electoral process as many of us prepare for yet another election.

In thinking about the role that the various entities and interest groups played on health care, it should be no surprise that in this environment, we have the Supreme Court overruling its decision in *Austin*, and overturning what I think is over one hundred years of law. Most of us, as individuals outside the court room and in our communities understand the distinction between a corporation and a natural person, whether the majority in this court quite understands that or not.

I remember when *Citizens United* came down, and we were in the midst of deciding whether we were going to go forward with health care. I recall that some of my colleagues actually talked about what that might mean for elections: "Well, if I say such and such, does that mean that a pharmaceutical corporation, an insurance company, someone who's doing business in my state might decide that they're going to engage in unlimited corporate expenditures in my next election?" And so I can already foresee that there could be a real chilling effect on the legislative process as we go forward.

And I don't think we know yet what the impact of *Citizens United* is, because I think corporations are trying to figure that out. Some of them will make a decision:, I don't want to spend unlimited amounts of funds, because it's really about my corporate brand and I don't want to have that impacted by spending in an election. But others may decide otherwise. I will tell you that the first notice I got was from a corporate lobbyist who represents several different corporations. That was the first notice I got of the *Citizens United* decision.

So I think it's going to be a difficult environment going forward to think about how this will impact our elections and how it will impact voters and participation in the process. I did read the decision a couple of times, and really talked with a number of people, many of whom are here. Jeff Clements, John Bonifaz, Jamie Raskin and others about what to do next. I decided, and some of my colleagues decided to as well, to introduce a constitutional amendment. In looking at the decision, I concluded that the Court didn't really leave a lot of avenues open.

I suppose if we were to go back in the process and figured out a way to construct a corruption argument around independent expenditures, that that could have been an avenue. I know others are trying some ideas around shareholder resolutions, additional disclosure. I'm all for that. I think I signed on to a number of the bills that have been introduced already to try some of these corrective measures to ameliorate the impact of *Citizens United*. But ultimately, I think the Court was saying to all of us very, very clearly: if you're going to come to us, it's really about the Constitution. So I don't think there are many avenues open.

Now I know that is not a widely-held view here, and some people told me that when I introduce this constitutional amendment, House Resolution 74, that you'll just be out there by yourself, nobody is going to sign on to that. I'm pleased to inform you that I think there are 23 of my colleagues who are about as wacky as I am, and we'll gain one every day.

But it's been amazing the impact that that's had on the public. We hear from people around the country who are galvanized and empowered by it. . And folks feel that we have to have a campaign finance system and election system that actually responds to people. And that may not be the constitutional argument for this room. But I will share with you one of the distressing points at which we were considering introducing this amendment, which I did with Congressman John Conyers, Chairman of the Judiciary Committee. So much of the work we were trying was to make the argument – what are the scholarly underpinnings of a constitutional amendment like this? – But, unfortunately, I don't think, that we have everything we need. I do believe that it's really incumbent on thoughtful people in this room, who really look and think about the Constitution every day, to provide a scholarly basis for the work we do in this area.

There are a group of attorneys general around the country who are challenging the healthcare bill. And I thought they were going to challenge it on 10th Amendment grounds – state sovereignty – and make all of those arguments. It turns out their challenge is actually around the Commerce Clause and the application of the Commerce Clause.

And so, I always have a Constitution in my handbag and I pull it out. And part of the reason is because as a progressive, I feel that we haven't owned the Constitution in the way we need to. And it's time to own it again. But we have to own it, as Michael described, with a degree of

scholarship that will enable those of us who are in politics to make the arguments that we need to strengthen our democracy,; to strengthen our electoral process and really to give a voice back to the citizenry.

When I worked at Public Citizen and beyond, for so many years, members on the other side of the aisle introduced constitutional amendments. Every other day there was a new one. Want to tie your shoes? Constitutional amendment. And so many of us as progressives working in politics and advocacy put up a red flag any time a constitutional amendment was introduced because we thought of it as just silly politics. And in so many ways, we've allowed those who share the most conservative viewpoint about constitutional interpretation to own our Constitution. And I think that's done us all a great disservice.

So bringing us to *Citizens United*, what I'd like to see is that body of constitutional scholarship that allows us to embrace the Constitution in a way that gives some vibrancy to voters, to our electorate and to our politics.

But I don't think that's all we have to do because even if corporations were not allowed to spend directly out of their treasuries to impact elections with independent expenditures, we have other problems with our electoral system. We have problems of a person like me who's not of independent wealth, who has to take a leave from her non-profit job to run for Congress, realizing that the hurdle was so high to raise money, to get a message out, and to actually even exercise any bit of speech in an environment in which incumbents, obviously, dominate the process. And so many of you would be surprised that a challenger who had 5% name recognition could come back and beat a then-8 term incumbent member of Congress. But that shouldn't be unusual. That should happen, whether it happens in primaries or our general election. And part of the reason that it doesn't is because of the way our campaigns are financed, because of the complexity of having to go out and raise money, spending, like some of my colleagues who, like me, spending 10, 15 hours a week on the telephone, calling the people we know to raise money from them.

So in addition to what we might need to do around the more immediate problem of what we need to do around *Citizens United*, I think that we have to create an environment in which public financing can survive. That means finding creative ways to fund publically funded campaigns so that we don't run afoul of constitutional protections. But it also means then, making sure that we have a regulatory framework in place that enables those challengers like me and otherwise to separate the serious ones from the not-so-serious ones, so we use our public dollars wisely. It also means making sure that we have regulations in place that ferret out corruption and potential for corruption in the political process.

I don't think that merely correcting the more immediate problem of what *Citizens United* has left us is the only thing that we need to do. But it is true that for the work that you do and the contribution that you make, we have to have a framework we can stand on, on which we again, own the Constitution.

You ask an interesting question, one of the questions you're asking yourselves today is whether the First Amendment limits the reform that's possible in money and politics. And I don't think it

limits it, but it certainly makes it more difficult to figure out. It certainly makes it more difficult to maneuver any type of statutory changes we might make to the campaign finance law. But we have to know how to do that. Another one of the questions that you ask is whether there is some other constitutional frame for which we need to look at our electoral process. I don't really know the answer to that, but I know that there are lawmakers like me who would like some answers. So we're looking for some creativity, some innovation, some out-of-the-box thinking about how we interpret our Constitution to give us the legs that we need for our advocacy.

I think that as we go forward in the next several weeks and months, coming out of Congress will be a set of "legislative fixes" for *Citizens United*. I fear that we're going to need you again because those will end up in Court. That seems pretty clear to me. But before we get there, before we get back to the Supreme Court, we better have the work that you do in place so that we can rely on it and so that the Supreme Court at least has something else to rely on.

I think that Michael knows that, and I share his views. You don't want to rely too much on this Court because you never know what it's going to deliver to you, but I'm looking forward to these next several weeks because we put health care reform to bed and we've opened up the space now to deal with issues of campaign finance reform, potential fixes for the damage the Court has left us in *Citizens United* and other kinds of ethics and lobbying reform. The necessity of these reforms was evident as we finished healthcare and frankly were evident when we were trying to work on energy policy as well. Whether it was the nuclear industry, the coal industry, you name it, the way to play in this game has become rather extraordinary. And it is often rather hard frankly to distinguish what corporations are doing in the campaign financing process from what they're doing in the lobbying process. I think it has all morphed into one thing and I believe that corporations, certainly, view it that way.

So I leave you with a bit of a task. Part of that task is to be thoughtful and creative about what you can share with us. And part of that task is to engage with each other, so we don't have to wait until we are in the Courts. Another piece of that is making sure that we have a true body of work that enables us to work more thoughtfully on legislation. I welcome any of your suggestions and arguments and debates about our constitutional amendment strategy.

There was an editorial about the *Citizens United* case, and they were shooting down my colleague Chris Van Hollen and Senator Schumer on what they're trying to do around shareholder disclosure. They offered a backhanded compliment to Chairman Conyers and myself, only because we were working on changing the Constitution, and they don't like any of this stuff. But I think it's going to take all of it. And I know that Senator Schumer feels that, and I know that Chris Van Hollen feels that. And so none of these strategies are in isolation.

If you do us any service at all, it is helping us to be a lot more creative about how we approach our legislation, and in enabling not just the constitutional scholarly community to weigh in, but in allowing people to weigh in about our democracy, about our elections, about our voice and our First Amendment protections. I think there are few among us who do not believe, and it's certainly true of myself, that it's important for our voices to be heard.

And the question is just what is the balance? Because right now, as a not-so-ordinary-but-pretty-ordinary citizen, I feel that my voice is just being completely wiped out by a set of folks who have an awful lot of money to spend, and unfortunately the United States Supreme Court has said to them, "Open your wallets, you can spend even more." I fear what that will do to our politics and to our policies. And I'd hate to see voters disengage themselves because they don't believe they have a voice anymore.

And that brings me to my last plea to you and that plea is that you figure out a way to empower voters. Michael was sharing with me some ideas around voter registration modernization.. There is no reason whatsoever that there needs to be an intermediary to register people to vote, to give them that basic way to express their citizenship and to express their voice without having to go through any number of bureaucracies in order to do that. That would be something that will galvanize the public as we work on these other things.

In this last debate on healthcare, people said that the public doesn't really care about process stuff, that it doesn't engage the public, that when you talk about process, that people will go to sleep but I think that we've seen pretty clearly that an engagement and a discussion about process can actually be pretty invigorating. So let's engage the public in a discussion about process around these issues that really will make a difference to our democracy and to participation.

With that I hope, I thank you very much. And I'm actually looking forward to picking up a number of the papers and to being in contact with you and with the Brennan Center, because I believe actually that this spring is going to be a really good spring for reform. There is energy behind it. There is space and opportunity to do that now, like there has never been before. So maybe we can thank the Roberts Court for this gift to enable us to organize in a different kind of way around these issues.

Thank you very much.